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9 **Attorneys for Debtor**

10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 LEEWARD HOTELS, L.P., an Arizona  
14 limited partnership,

Debtor.

Chapter 11 Proceedings

Case No. 99-09162-ECF-GBN

**OBJECTION TO PROOFS OF CLAIM FILED  
BY LENNAR**

15 Debtor files this objection to the proofs of claim filed by LaSalle National Bank, in its capacity as  
16 Trustee for the registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Passthrough  
17 Certificates, Series 1997-CF1, by and through its Servicer, Lennar Partners, Inc. ("Lennar").

18 Lennar has filed twenty separate proofs of claim ("POC"). Each of 10 of the POC  
19 represents Lennar's first lien claim with respect to an individual Hotel; each of 10 of the POC represents Lennar's  
20 second lien claim with respect to an individual Hotel. The POC each identify principal, interest, fees, costs and  
21 real property taxes. The second lien claims for each of the Hotels are identical in amount. A sample of a first lien  
22 POC and second lien POC are attached to this objection. The objection is based on the following:

23 1. Improper Components

24 On each of the POC, Lennar has identified "escrow payments" due as of August 1, 1999. These  
25 amounts are included as part of the overall debt and should not be added to the debt. In addition, Lennar has  
26 claimed "senior unpaid real property taxes" which are not a part of the debt. These taxes are paid separately in  
27 either the Debtor's or Lennar's plan.  
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The amount of Lennar's allowed secured claim with respect to each of the Hotels will be determined based on the value of Lennar's collateral. To the extent necessary, Debtor objects to the POC which exceed the value of the collateral and to the inclusion of post-petition interest, fees, costs and other charges.

### 3. Prepayment Penalty

Lennar has claimed a prepayment charge should be applied if the indebtedness is paid prior to maturity. A prepayment charge is not allowable in that 1) for the Hotels which are being retained by the Debtor the indebtedness is not being “pre-paid”; 2) for the Hotels which are being abandoned by the Debtor, the value of the collateral is less than the amount of the debt; 3) the so-called prepayment charge is actually a penalty and is unenforceable and in any event is unreasonable.

Based on the foregoing, Debtor requests that the Court establish the allowed secured claims of Lennar based on the value of the collateral and eliminate the improper charges.

DATED this 7<sup>th</sup> day of April, 2000.

HEBERT, SCHENK & JOHNSON, P.C.

By /s/ Carolyn J. Johnsen #011894  
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COPY of the foregoing mailed or  
served via (fax\*/ electronic notification\*\*  
or hand-delivery if marked \*\*\*)  
this 7<sup>th</sup> day of April, 2000, to:

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29 /s/ Jolynn Marquardt

30 F:\Data\KILBURG.B\9903401\obj-poc.wpd

## PROOF OF CLAIM

Case Number

**B-99-09162-PHX-GBN**

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check box if you have never received any notices from the bankruptcy court in this case.

Check box this address differs from the address on the envelope sent to you by the court.

Telephone number: (602) 528-4000

Check here

Check here if this claim replaces or amends a previously filed claim, dated: \_\_\_\_\_

Taxes	
Other	

Your SS#:

Unpaid compensation for services performed

from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

## 3. If court judgment, date obtained:

§ See Attachment A \_\_\_\_\_

§ See Attachment A

☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

☒ Check this box if your claim is secured by collateral (including a right of setoff).

**Brief description of Collateral:**

**Real Estate**                      **Motor Vehicle**

Other	Hotel property
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Value of Collateral: \$ currently unknown

Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ See Attachment A

**6. Unsecured Priority Claim:**  
Check this box if you have an unsecured priority claim

Amount entitled to priority: \$ \_\_\_\_\_

Specify the priority of the claim:

Wages, salaries, or commissions (up to \$4,300), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(3)

Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(4)

Up to \$1,950 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)

Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)

Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(8)

\*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. **Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

**8. Supporting Documents:** *Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statement of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien.*

DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

**9. Date-Stamped Copy:** To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date:

**January 3, 2000**

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach power of attorney, if any)

*Attorneys for the Secured Lender*

*Penalty for presenting fraudulent claim: Fine up to \$50,000 or imprisonment up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

## ATTACHMENT A

Borrower Name: Round Rock Hotel, L.P.

Account Number: 00-9791562 / 961093870

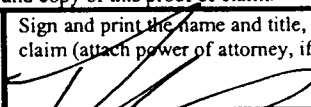
Principal Balance as of August 1, 1999:	\$ 2,320,074.32
Accrued Interest @ 9.75% as of August 1, 1999	\$ 168,806.90
Escrow Payments due as of August 1, 1999	\$ 31,781.97
Default Interest due as of August 1, 1999	\$ 68,055.50
Late Fees as of August 1, 1999	\$ 9,763.64
Interest On Advances as of August 1, 1999	\$ 254.14
Attorney's Fees/Costs as of August 1, 1999	\$ 1,994.49
Senior Unpaid Real Property Taxes	\$ 33,903.72
Less: Funds Held in Suspense	\$ (22,697.96)
TOTAL:	\$ 2,611,936.72

Interest has accrued on this indebtedness from and after August 2, 1999 at the per diem rate of \$886.14 (at the default rate of interest) and \$628.35 (at the non-default rate of interest). Moreover, to the extent the lender is fully or oversecured, attorney's fees and costs will also be asserted.

In addition to the foregoing, there is a prepayment charge with respect to this loan, which would equal \$487,140.31 as of October 15, 1999, if this loan is paid off prior to its maturity.

The loan and security documents evidencing this loan are voluminous and have been filed as Exhibits #85, #86 and #87, inclusive in the Appendix of Exhibits Filed by Secured Lender in Support of Various Pleadings filed on August 3, 1999, all of which are incorporated by this reference herein.

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<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>Leeward Hotels, L.P., an Arizona limited partnership</b>	Case Number <b>B-99-09162-PHX-GBN</b>	<b>JAN 03 2000</b>
<b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>LASALLE NATIONAL BANK, in its capacity as Trustee for the registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Passthrough Certificates, Series 1997-CF1, by and through its Servicer, Lennar Partners, Inc. (the "Secured Lender")</b>	Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. Check box if you have never received any notices from the bankruptcy court in this case. Check box this address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <b>Squire, Sanders &amp; Dempsey L.L.P. c/o Thomas Salerno, Esq. Two Renaissance Square 40 N. Central Avenue, Suite 2700 Phoenix, Arizona 85004-4498 Telephone number: (602) 528-4000</b>		
Account or other number by which creditor identifies debtor: <b>See Attachment A</b>	Check here if this claim replaces or amends a previously filed claim, dated:	
<b>1. Basis for Claim:</b> Goods sold Services performed <input checked="" type="checkbox"/> Money loaned Personal injury/wrongful death Taxes Other _____	Retiree benefits as defined in 11 U.S.C. § 1114(a) Wages, salaries, and compensation (Fill out below)  Your SS#: _____  Unpaid compensation for services performed from _____ (date) to _____ (date)	
<b>2. Date debt was incurred:</b>  <b>March 3, 1997</b>	<b>3. If court judgment, date obtained:</b>	
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>See Attachment A</u> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief description of Collateral: Real Estate _____ Motor Vehicle _____ Other <u>Hotel property</u>  Value of Collateral: \$ <u>currently unknown</u>  Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ <u>See Attachment A</u>	<b>6. Unsecured Priority Claim.</b> Check this box if you have an unsecured priority claim  Amount entitled to priority: \$ _____ Specify the priority of the claim:  Wages, salaries, or commissions (up to \$4,300), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(3)  Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(4)  Up to \$1,950 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(6)  Alimony, maintenance, or support owed to a spouse, former spouse, or child – 11 U.S.C. § 507(a)(7) Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8) Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(8)  <i>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>	
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statement of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		<b>THIS SPACE IS FOR COURT USE ONLY</b>
Date: <b>January 3, 2000</b>  Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach power of attorney, if any)  <b>Attorneys for the Secured Lender</b>		
<b>Penalty for presenting fraudulent claim: Fine up to \$50,000 or imprisonment up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.</b>		



## ATTACHMENT A

Borrower Name: Plainview Holiday Hotel, L.P., as Guarantor

Account Numbers: 00-9791552/961093869, 00-9790812/961093795, 009791562/961093870, 00-9791549/961093868, 00-9791617/961093875, 00-9791604/961093874, 00-9791578/961093871, 00-9791581/961093872, 00-9791594/961093873, 00-9791536 / 961093867

Principal Balance as of August 1, 1999:	\$ 21,096,034.17
Accrued Interest @ 9.75% as of August 1, 1999	\$ 1,534,931.93
Escrow Payments due as of August 1, 1999	\$ 534,852.45
Default Interest due as of August 1, 1999	\$ 618,816.91
Late Fees as of August 1, 1999	\$ 89,932.57
Interest On Advances as of August 1, 1999	\$ 2,647.77
Attorney's Fees/Costs as of August 1, 1999	\$ 23,427.83
Senior Unpaid Real Property Taxes	\$ 294,441.02
Less: Funds Held in Suspense	\$ <u>(180,098.47)</u>
TOTAL:	\$ 24,014,986.18

Interest has accrued on this indebtedness from and after August 2, 1999 at the per diem rate of \$8,057.50 (at the default rate of interest) and \$5,710.51 (at the non-default rate of interest). Moreover, to the extent the lender is fully or oversecured, attorney's fees and costs will also be asserted.

In addition to the foregoing, there is a prepayment charge with respect to this guaranty, which would equal \$4,431,890.15 as of October 15, 1999, if this indebtedness is paid off prior to its maturity.

The guaranty and security documents evidencing this guaranty are voluminous and have been filed as Exhibits #21, #22, #113 and #114, inclusive in the Appendix of Exhibits Filed by Secured Lender in Support of Various Pleadings filed on August 3, 1999, all of which are incorporated by this reference herein.